

accident occurred approximately 15 minutes before the completion of claimant's regular shift on May 14, 1996.

Claimant testified he immediately notified his supervisor, Paul Holliday, who is also his father, of the accident. After storing their tools, claimant, his father, and Bart Bruning, a co-worker and personal friend of both claimant and his father, traveled from the job site located in Wichita, Kansas, to respondent's warehouse located in Haysville, Kansas. At the warehouse, claimant's father notified the respondent's co-owner, Robert E. Tucker of claimant's hand injury. Mr. Tucker accompanied the three employees personally to a minor medical emergency center's facility for the purpose of obtaining medical treatment for claimant's hand injury. Claimant was eventually seen on the day of the injury by John P. Estivo, D.O., at Riverside Hospital in Wichita, Kansas.

Dr. Estivo reviewed x-rays of claimant's right hand and diagnosed a displaced transverse right 4th metacarpal fracture. The following day, May 15, 1996, Dr. Estivo performed a closed reduction of the 4th metacarpal shaft fracture to claimant's right hand. Claimant was released by Dr. Estivo for activities he could tolerate on July 11, 1996.

Claimant, his father, and co-worker Bart Bruning all testified in person before the Administrative Law Judge. Respondent presented the testimony of co-owner Robert E. Tucker and Kevin Maxwell, an employee of the respondent, by deposition. Respondent contends the witnesses that testified on its behalf all support the scenario that claimant injured his right hand when he hit Kevin Maxwell in the back of the head during an argument between claimant's father and Mr. Maxwell that occurred on the day of injury. That argument allegedly took place in the respondent owned trailer, located on the job site which was used for the purpose of providing employees with a place to change clothes and take breaks. Claimant, his father, and Bart Bruning all testified that a confrontation did not take place between Kevin Maxwell, claimant, and his father, as alleged by Kevin Maxwell. Conversely, Kevin Maxwell testified a confrontation did take place and he received medical treatment for the bump behind his ear that resulted from claimant hitting him from behind with his hand. Mr. Tucker testified that Kevin Maxwell, after he was struck by the claimant, called and notified him of the confrontation and the subsequent injury.

Although the Administrative Law Judge did not have an opportunity to observe respondent's witnesses testify in person, he did have the opportunity to personally observe claimant, his father, and co-worker Bart Bruning testify. The outcome of this preliminary hearing hinges completely on the credibility of the witnesses. One or more of the witnesses that testified in this matter are simply not telling the truth. In cases where the outcome hinges on the credibility of the witnesses, the Appeals Board finds that some deference should be given to the Administrative Law Judge when he was able to personally observe the witnesses. Accordingly, giving some deference to the conclusions of the Administrative Law Judge, the Appeals Board affirms the Administrative Law Judge's preliminary hearing Order that found the injury to be work related and granted claimant's request for payment of medical bills required to treat claimant's right-hand injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated November 21, 1996, should be, and is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

c: Stanley R. Juhnke, Hutchinson, KS
Gregory D. Worth, Lenexa, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director